



## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### 25 CFR Part 150

[212A2100DD / AAKC001030 / A0A501010.999900]

RIN 1076-AF56

### Indian Land Title and Records

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Final rule.

**SUMMARY:** This final rule revises Bureau of Indian Affairs (BIA) regulations governing the Land Title and Records Office (LTRO) to reflect modernization of the LTRO. The LTRO maintains title documents for land held in trust or restricted status for individual Indians and Tribes (Indian land). This rule replaces outdated provisions and allows for more widespread efficiencies by reflecting current practices, while creating a framework for future LTRO operations.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

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## **I. Background**

The LTRO maintains title documents for land that the United States holds in trust or restricted status for individual Indians or Tribes (Indian land), roughly similar to how counties and other localities maintain title documents for fee land within their jurisdictions. Several Acts authorize BIA maintenance of these title records. *See, e.g.*, 25 U.S.C. 5, 9; 64 Stat. 1262; 34 Stat. 137; 35 Stat. 312; and 38 Stat. 582, 598.

The LTRO has several physical offices throughout the country. These LTRO offices are the successors to the “title plants” that were established by regulation in 1965 to serve what were then BIA “area offices.” *See* 30 FR 11676 (September 11, 1965). Updates to the regulations in 1981 defined the role of the LTRO and assigned each LTRO office a geographic service area, containing certain BIA area offices or Tribal reservations. *See* 46 FR 47537 (September 29, 1981), later redesignated at 47 FR 13327 (March 30, 1982).

The Department published a proposed rule on December 11, 2020 (85 FR 79965) and accepted comments on the proposed rule until February 9, 2021. Section II of this document provides an overview of the final rule. Section III of this document summarizes the comments received on the proposed rule and responds to those comments. Section IV of this document details changes made from the proposed rule to the final rule stage.

## **II. Overview of Final Rule**

The regulations being finalized today replace those that have been in place since 1981 (though redesignated from 25 CFR part 120 to 25 CFR part 150). Now, 40 years later, BIA “area offices” are BIA Regions, and the LTRO maintains title documents primarily through an electronic system: the Trust Asset Accounting Management System

(TAAMS). Each LTRO office records land title documents that are primarily within its designated geographic area; however, it is BIA's vision that, eventually, all title documents will be electronically stored and accessible to LTRO offices regardless of geographic area.

The rule modernizes the LTRO regulations to provide a framework for continued operations and future electronic maintenance of most title documents. This approach will more efficiently address title-related actions that support Indian land transactions (such as a title examination to take land into trust) by allowing workloads to be shifted among LTRO offices to promptly address each request and prevent the risk of any backlogs. The rule continues to provide that each LTRO office is primarily responsible for certain geographic areas, but rather than specifying those LTRO offices in the rule, it instead points to a webpage where BIA can keep the list accurately updated.

The rule also addresses changes that have evolved over the past 40 years that have removed requirements for Secretarial approval of certain title documents in support of Tribal self-governance and self-determination (e.g., individual leases under approved Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Act regulations) by clarifying that these documents must still be recorded in the LTRO because the documents affect who is authorized to use Indian land.

The rule also makes more transparent the LTRO's role as a support office to BIA and, with respect to title-related matters related to probate, the Office of Hearings and Appeals (OHA). Generally, the Realty staff in BIA are the primary liaison to the LTRO, as the Realty staff are responsible for processing land transactions requested by Indian and Tribal landowners. Similarly, the rule would clarify the LTRO's role with respect to any defects to title: the LTRO provides a notation of the defect in the record of title, but the originating office is responsible for providing the LTRO with a corrected title document for the LTRO to record.

Finally, the rule allows the BIA Director to delegate recording responsibilities to another office for certain transactions on an as-needed basis. This capability provides flexibility to facilitate future electronic recording capabilities for efficiency.

The following table shows changes from the current regulation to the final rule.

<b>Current 25 CFR §</b>	<b>New 25 CFR §</b>	<b>Description of Changes</b>
150.1 Purpose and scope.	150.1 What is the purpose of this part?	Provides more general description of responsibilities (e.g., to account for other types of reports beyond land title status reports that LTRO provides)
150.2 Definitions	150.2 What terms do I need to know?	<p>Alphabetizes terms.</p> <p>Adds definitions for “certify,” “certified copy,” “Certifying Officer,” “defect” or “title defect,” “I” or “you” (for plain language purposes), “inherently Federal function,” “land,” “Office of Hearings and Appeals (OHA),” “Probate Inventory Report,” “record of title,” “Region,” and “title.”</p> <p>Deletes definitions of “Administrative Law Judge,” “Commissioner,” “land,” and “Superintendent.”</p> <p>Revises definition of “Agency” to clarify that contracting and compacting Tribes are included.</p> <p>Revises definition of “Indian land” to limit to trust or restricted land only, in accordance with other regulatory definitions, while moving provisions regarding other categories of land to proposed § 150.201(c).</p> <p>Revises definition of “recording” to move substantive statement as to the significance of recording a document to the body of the regulation at proposed § 150.101.</p> <p>Revises definition of “title document” to provide examples.</p> <p>Revises definition of “title examination” to add detail.</p> <p>Revises definition of “Tribe” to cite the List Act of 1994.</p>
---	150.3 May Tribes administer this part on	New section to address that Tribes may compact or contract for LTRO functions under Tribal self-governance and self-determination compacts and contracts.

	LTRO's behalf?	
---	150.101 What is the purpose of the record of title?	New section to address the significance of recording a document in the record of title.
150.3 Maintenance of land records and title documents.	150.102 Who maintains the record of title?	No substantive change.
---	150.103 What services does the LTRO perform to maintain the record of title?	New section to provide a list of services that the LTRO performs.
---	150.104 How does the LTRO maintain the record of title?	New section to address that the LTRO primarily maintains the record of title electronically.
150.4 Locations and service areas for land titles and records offices.	150.105 Are certain LTRO offices responsible for certain geographic areas?	Revises to provide flexibility to allow for workload sharing across LTRO offices while noting LTRO offices have primary responsibility for certain geographic areas. Replaces the list of addresses for each LTRO office with a webpage for a more frequently updated list of each LTRO office's area of primary geographic area.
150.5 Other Bureau offices with title service responsibility.	---	Deleted because this section is no longer necessary.
150.6 Recordation of title documents.	150.201 What is recorded in the record of title?	<p>Removes language assuming hard copy transmission of documents.</p> <p>Adds language to account for the need to record certain documents that are not subject to Secretarial approval.</p> <p>Adds that LTRO offices may also maintain documents demonstrating the rights of use, occupancy, and/or benefit of certain Tribes to non-Indian land and certain documents related to Indian land that are not title documents.</p>

---	150.202 Must I check with any other governmental office to find title documents for Indian land?	New section to specify that in some instances, due diligence may require examination of other records of title for Indian land.
---	150.203 Who may submit a title document for recording?	Clarifies the role of the LTRO as a service office for BIA Agencies, Regions, and OHA, who act as the primary liaison to Indian and Tribal landowners.
---	150.204 Who records title documents?	Clarifies that the BIA Director may delegate the recording function to other Agency offices by documenting the delegation and types of transactions to which it applies in the Indian Affairs Manual.
---	150.205 What are the minimum requirements for recording a title document?	New section to clarify what must be included in a title document that is approved by the Secretary and what must be included in title documents that are deemed approved.
150.7 Curative action to correct title defects.	150.206 What actions will LTRO take if it discovers a title defect?	Revises to provide that LTRO offices will no longer complete administrative modifications; rather they will put a notation in the record of title and contact the originating office for correction.
150.8 Title status reports.	---	Incorporated into new § 150.302.
150.9 Land status maps.	---	Incorporated into new § 150.302.
150.10 Certification of land records and title documents.	150.301 How does LTRO certify copies of title documents?	Revised for plain language.
---	150.302 What reports does the LTRO provide?	Lists the universe of reports that the LTRO may provide for Indian land.
150.11 Disclosure of land records, title documents, and title reports.	150.303 Who may request and receive copies of title documents in the record of title or reports from LTRO without filing	Revises to include the categories of persons/entities that may obtain information under current laws including the American Indian Probate Reform Act of 2004, 25 U.S.C. 2204.

	a Freedom of Information Act request?	
---	150.304 Where do I request copies of title documents or reports from LTRO?	New section to clarify that the BIA Agency or Region is the liaison to the LTRO.
---	150.305 What information must I provide when requesting copies of title documents and reports?	New section to list what information BIA will require in order to identify the land for which a report is being requested.
---	150.306 Will I be charged a fee for obtaining copies of records?	New section to provide that the LTRO may charge fees in accordance with the Freedom of Information Act fee schedule, but will not charge fees to Indian or Tribal landowners.
---	150.401 Who owns the records associated with this part?	New section to clarify what records are Federal records as opposed to Tribal records in cases where a Tribe has contracted or compacted for LTRO functions.
---	150.402 How must records associated with this part be preserved?	New section regarding preservation requirements for Federal records.
---	150.403 How does the Paperwork Reduction Act affect this part?	New section required because the regulation imposes an information collection by requiring individuals to provide certain information in order to obtain copies of records.

### III. Response to Comments

The Department hosted two Tribal consultation sessions on this proposed rule and received written submissions from 12 Tribes. During the public comment period, the Department also received nine comments from individuals, Indian housing and

homeownership organizations, title companies, and capital companies. Of the 21 total written submissions, several, including half of the Tribes who commented, expressed general support for the regulatory revisions as necessary for the proper functioning of LTROs and to account for technological improvements and policy changes throughout Indian country. All provided additional comments and suggestions. The Department appreciates this input and provides its responses organized by subpart, below.

## **A. Comments on Subpart A – Purpose and Definitions**

### **1. Definition of “Indian land”**

One title insurance company that commented asked that the phrase “or in Federal law” be removed from the definition of “Indian land” because, according to the commenter, that phrase could be construed to mean the Non-Intercourse Act at 25 U.S.C. 177. The commenter stated that the consequence of that interpretation would be that “Indian land” would include title documents to Tribal fee land and, arguably, could allow LTRO to take the position that the world has constructive notice of that Tribal fee land recorded in the Indian land record of title, even if it is not recorded in the county record of title.

*Response:* The phrase “or in Federal law” captures restrictions on alienation for certain Tribes that may not be stated in the conveyance instrument but apply as a matter of Federal law due to court order or otherwise. The clear trend in the case law is that the Non-Intercourse Act does not apply to fee land, whether on-reservation or off-reservation. This trend is consistent with BIA’s authority for approving transactions that affect title.

A Tribe requested clarification that Indian land includes mineral (subsurface) interests, pointing out that the current regulations include a definition for “land” as meaning real property and without that specification, the term “Indian land” is ambiguous



as to whether it includes the subsurface or mineral estate and whether “title” encompasses mineral estates that have been severed from surface estates.

*Response:* The final rule adds the definition for land as including surface and/or subsurface interests.

## **2. “Title document”**

One Tribe stated their agreement with the proposed rule’s inclusion of examples of title documents in the definition of “title document” as adding clarity. This Tribe also agreed with the proposed rule’s removal of the provision in “title document” as including only documents required to be recorded by regulation or Bureau policy as appropriate to accord a full and accurate depiction of Indian land in the chain of title.

*Response:* The final rule includes the proposed rule’s definition of “title document.”

## **3. Comments Requesting New Definitions**

### **a. “Inherently Federal function”**

A few Tribes and one title insurance company commenter requested a definition be added for “inherently Federal function.” One Tribe requested that the term be interpreted to exclude certain items (i.e., FOIA and records management).

*Response:* The final rule adds a definition of “inherently Federal function” to match the definition of the term provided in the Indian Self-Determination and Education Assistance Act (ISDEAA). More specificity on what constitutes an inherently Federal function is necessarily a case-by-case examination because different laws apply to different Tribes.

### **b. “Individual Indian”**

An individual commenter requested a new definition for “individual Indian” or “Indian owner” because individuals may own Indian land and their rights to challenge decisions related to title should be acknowledged. This commenter also stated that the

regulations imply that individual Indians' fiduciary protections and rights are subordinated to Tribes because, for example, the term "Tribe" is defined while the term "individual Indian" is not.

*Response:* The term "individual Indian" is not defined in the regulation because it appears only in the definition of "Indian land" and the definition of "Probate Inventory Report," both of which can be understood without defining "individual Indian."

Individual Indians' rights as landowners to challenge Federal decisions regarding title are governed by different regulations, such as 25 CFR part 2, Appeals from Administrative Actions. Nothing in the final rule for 25 CFR part 150 subordinates individual Indians' fiduciary protections and rights to Tribes. The term "Tribe" is defined because that term appears in provisions relating to Tribes as sovereign governments (e.g., provisions relating to compacting or compacting Federal functions of an LTRO, provisions relating to recordation of leases between Tribes and Tribal Energy Development Organizations).

## **B. Comments on Subpart B – Record of Title**

### **1. Purpose of the Record of Title**

Two title insurance company commenters asked how constructive notice works in the context of an LTRO, as far as whether the recordation of a title document in the LTRO gives the real property interest priority over interests recorded later or whether notice impacts priority of interests.

*Response:* Recordation of title documents for Indian land is different from recordation of title documents for fee land in county records. Priority is not generally an issue in recordation of title documents for Indian land because the Department conducts a title examination before taking land into trust or restricted status, and the LTRO relies upon the date of Departmental approval (or other applicable date when Departmental approval is not required) as the valid and effective date of the transaction. In other words, there is no significance to the date of recording in the LTRO the way there may be

significance to the date of recording title documents to fee land in county records. In response to this comment, the final rule deletes the statement from § 150.101 that the record of title provides the public with constructive notice; rather, only certain entities/individuals have access to information in the record of title. *See* § 150.303.

## **2. LTRO Services**

Two title insurance company commenters requested the regulations include a specific timeframe for LTRO to issue title status reports (TSRs). Another commenter stated that the rule should impose timeframes on the LTRO and provide recourse for delays.

*Response:* The LTRO processes mortgage title requests for TSRs within two working days of receipt from the BIA agency. This timeframe is included in policy but not the regulations to allow flexibility to change as circumstances require for internal management of the LTRO, without undergoing a rulemaking. Requestors should coordinate with their BIA agency contact to ensure that a request for a TSR has been submitted to LTRO.

Two title insurance company commenters suggested including uncertified TSRs in addition to certified TSRs in § 150.103 to be consistent with the language in § 150.302(b).

*Response:* The final rule adds “uncertified Title Status Reports” for consistency with § 150.302(b).

One individual commenter recommended adding a subpart for LTRO to record title transfers resulting from historic sales where a “reserve period” is included for the original “provisional sale” only upon assurance that the buyer and seller negotiated the final disposition upon expiration of the “reserve period.”

*Response:* This comment appears to relate to terms of a title transfer, which is beyond the scope of this regulation. The commenter should raise this comment with their local BIA agency staff.

An individual commenter asked whether it would be LTRO's or the BIA agency's responsibility to notify previously recognized owners that a correction to a probate inventory report is being proposed.

*Response:* If LTRO discovers an error in a probate inventory report that impacts Indian land ownership, then the LTRO notifies the BIA agency realty staff in writing, and the BIA agency works with the Office of Hearings and Appeals, to notify landowners and make a correction as appropriate.

### **3. Maintaining the Record of Title**

Two title insurance company commenters requested that the Department address any efforts to digitize physical copies and confirm that physical documents are historical documents only. These commenters and a homeownership organization requested clarification that the LTRO is currently digitizing all documents it now receives.

*Response:* The LTRO has digitized nearly all Indian land title records; however, there remain some non-imaged (i.e., non-digitized) records. The LTRO digitizes all documents it currently receives so that they can be stored electronically in the record of title and will work with BIA Realty to ensure all known remaining non-digitized records are digitized.

One Tribe described the history of its agency's recordkeeping on well locations and lease information.

*Response:* The Tribe's comment has been shared with the relevant agency.

### **4. LTRO Responsibility for Certain Geographic Areas**

Section 150.105 of the proposed rule provided that staff at each LTRO office has primary responsibility to maintain the record of title for Indian land under that LTRO

office's assigned geographic area, and that LTRO offices may assist other LTRO offices in maintaining the record of title for Indian land not under that office's assigned geographic area as needed. A homeownership organization stated its support for a fully accessible electronic system across all LTRO offices to allow workloads to be shifted and prevent backlogs. Two title insurance company commenters asked what the process is for ensuring documents are timely and correctly transmitted among LTRO offices, how sharing workloads would impact recordation times, and whether there is a tracking option to determine where submitted documents are.

*Response:* All title documents are digitized (scanned into electronic versions) and uploaded to a database that is accessible to all LTRO offices, regardless of geographic area. Having one LTRO office assist another in performing functions would have no impact on recording timeframes, as all LTRO offices are subject to the same standards. LTRO uses a system for tracking workloads to determine where submitted documents are pending at any given point.

A Tribe expressed concern that LTRO offices outside the Tribe's assigned geographic area may lack the knowledge and expertise to process title documents unique to the geographic region. This Tribe requested granting Tribes the option to have their title document requests completed by their local LTRO or tasking local LTROs with reviewing any reports produced by a secondary LTRO or outside BIA office. Another Tribe requested clarity on what it means for a non-assigned LTRO office to assist others, the process by which they would provide assistance, and the types of functions or services that the assistance would include. This Tribe suggested establishing a standardized process for providing as-needed assistance and clarifying whether a Tribe that has contracted or compacted to perform LTRO functions on its reservation may also carry out the function for lands located in other geographic areas.

*Response:* While there may be variations in types of title documents among regions, title documents are encoded by the knowledgeable BIA realty staff familiar with potential unique variations. The LTRO functions do not vary across geographic areas. LTRO has determined that it is more appropriate to set out in policy the details of the process by which LTRO offices would provide assistance and types of functions or services the assistance would include, as a matter of internal management that does not have any effect on landowners or others, except as a method of ensuring that LTRO continues to perform its functions expeditiously. The final rule also clarifies that this provision does not apply to Tribes that are contracting or compacting the LTRO function, because under the Indian Self-Determination and Education Assistance Act, those contracting or compacting Tribes would first need to obtain authorization from each Tribe to be benefitted by the proposed contract or compact before assuming operation of any program, function, service, or activity (PFSA). 25 CFR § 900.8(d)(1).

### **C. Comments on Subpart C – Recording Documents**

#### **1. Documents LTRO Records (§ 150.201)**

An individual commenter suggested adding a provision to require LTRO to record when title changes from trust to fee and title recordation responsibilities are transferred to State or local jurisdictions.

*Response:* When a tract is transferred to fee status, it is no longer “Indian land” and is inactivated in the record of title.

A Tribe stated that the requirement to record subleasehold mortgages under 25 CFR 150.201(a) ensures the record of title is accurate, complete, and up to date, but could constrain current staffing and resources for LTRO offices that handle a significant number of leases, noting that this requirement triples the number of instruments the LTRO records and maintains for its reservation.

*Response:* Including subleasehold mortgages as recordable documents reflects a regulatory requirement that already exists in 25 CFR part 169.

Another Tribe noted that the list in § 150.201 of documents for which Secretarial approval is not required, but must be recorded, does not include Tribal utility lines crossing Tribal lands.

*Response:* The list included in § 150.201 is not exhaustive; however, the final rule adds this item to the list for clarity.

A title insurance company commenter asked what the phrase “certain Tribes” is referencing in § 150.201(c)(1).

*Response:* The final rule replaces the phrase “certain Tribes” with “a Tribe.”

This same title insurance company commenter requested a global statement be added to the regulations confirming that nothing prohibits recording title in county records with the consent of the landowner.

*Response:* While it is true that nothing prohibits recording title to Indian land in county records with the consent of the landowner, the final rule does not include this statement because that statement could cause confusion regarding the official record of title for Indian land.

## **2. Checking with Other Governmental Land Records (§ 150.202)**

A Tribe expressed concern that the regulatory provision saying that due diligence may require examination of other Federal, State, and local records is unclear and distorts the role LTRO offices play in maintaining the official record of title for Indian land. The Tribe asserts that the regulation should be clear on this point, to eliminate any misconception that the record of title for all lands, including Indian lands, is maintained at the State or local level.

*Response:* The final rule clarifies in § 150.202 that LTRO maintains current and historical title documents to Indian land in the system of record.

A homeownership organization suggested that § 150.202 should give examples of circumstances in which due diligence may require examination in other records of title.

*Response:* Examples of circumstances in which due diligence may require examination in other records of title include: archives for original land patents may require examination in other Federal records of titles; and fee-to-trust transactions for undivided fee interests in a tract in which other undivided interests are owned in trust or restricted status may require examination in State and local records of title. The final rule does not include these examples in the regulatory text because doing so may give the impression that these examples constitute the entire universe of documents for which due diligence may require examination in other records of title.

### **3. Who May Submit for Recording (§ 150.203)**

Two title insurance company commenters requested the regulations include a timeframe for recording upon submission.

*Response:* As mentioned above, the LTRO does abide by internal timeframes. LTRO has an internal timeframe of two business days for recording any document upon receipt from the Agency, Region, or OHA. The timeframe for the Agency, Region, or OHA to prepare and transmit a document to LTRO is outside the scope of this rule.

### **4. Delegation of the Recording Function (§ 150.204)**

One Tribe commented on § 150.204, which states that the BIA Director may delegate authority to record title documents to another BIA office by documenting the delegation and types of transactions to which it applies in the Indian Affairs Manual. The Tribe stated their support for the flexibility to allow workload sharing across LTRO offices, so long as the primary LTRO primarily maintains the record of title. The Tribe also requested that Tribes be given notice of any long-term delegations so the Tribe may discuss the delegation with the Regional Director. An individual commenter expressed concern with allowing BIA to delegate authority to another office.



*Response:* The final rule retains this provision to provide flexibility for workload sharing. Any long-term delegation that has potential Tribal implications would be subject to Executive Order 13175 requirements for Tribal consultation.

A Tribe asked that privacy concerns be addressed through best practices to ensure that documents are only accessed by designated and authorized personnel for BIA purposes.

*Response:* The Privacy Act applies to records within the record of title and, under its system of record, access to the record of title is limited to designated and authorized personnel for official purposes.

### **5. Minimum Requirements for Recording (§ 150.205)**

An individual commenter described past sales that reserved part of the interests (such as the mineral rights) for transfer at a later date, and stated they require affirmative title actions.

*Response:* This section, § 150.205(b), sets out the minimum requirements for recording documents. Actions required to obtain BIA approval of a transfer are addressed in separate regulations.

A title insurance company commenter requested clarification as to whether the “proper notarization or other acknowledgment of the signatures of the parties” must be pursuant to State law.

*Response:* The applicable law depends upon the document, and where it was signed. Notaries are commissioned under State law. Other acknowledgments may include those authorized for military members to acknowledge other military members’ signatures, social workers or wardens to acknowledge the signatures of incarcerated individuals, and foreign country notary equivalents. The LTRO does not scrutinize the notary commission authority, beyond checking to ensure notary’s name appears on the stamp and the commission has not expired.

Another commenter asked whether notarization pursuant to remote online notarization laws is considered “proper notarization or other acknowledgment of the signatures of the parties.”

*Response:* Notarial acts follow State laws where the notary is physically located. While the Department of the Interior continues to monitor remote online notarization capabilities, the Department does not currently recognize remote online notarization for Federal purposes, even when permitted under State notarial laws. Some State laws have included language that simultaneous live audio/video would constitute “in-person” acknowledgment. For these reasons, the final rule specifies in § 150.205(a)(3) that “traditional in-person” notarization or other “in-person” acknowledgment of the parties’ signatures, if appropriate, is a minimum requirement for recording.

Two title insurance company commenters requested more specificity about when a tract number is required in addition to the legal description to record a document.

*Response:* The final rule revises the proposed rule by stating that the tract number should be included “if available,” rather than “if required.” *See* § 150.205(a)(1).

A Tribe pointed out that the current Part 150 states that title documents must be submitted to the appropriate LTRO for recording immediately after final approval, issuance, or acceptance, but the new proposed rule at § 150.205 deletes any reference to a timeframe. This Tribe also asked whether the requirement to record documents that may not have been recorded in the past is retroactive.

*Response:* Any applicable timeframes for agencies to submit documents for recording are found in the regulations governing the underlying realty transactions. For example, regulations governing leasing provide that BIA will record the lease documents immediately upon approval of the transaction. *See, e.g.,* 25 CFR 162.217, 162.246, 162.343, 162.443, 162.533, 162.568.

## **6. Title Defects (§ 150.206)**

An individual commenter requested that a statement be added to § 150.206 to clarify that corrections to title documents are made after the BIA adjudicates the defect under appropriate regulations, including notice to potential owners/heirs or impacted lenders regarding the corrections that are being requested or proposed. Several title insurance company commenters had similar comments, stating that there is no process to notify the parties of a need for correction and asked how they would know that a document is being corrected.

*Response:* This regulation focuses on LTRO's role, which is to record title documents. The BIA Region or Agency is the liaison to the parties to the transaction and is responsible for notifying them. The responsibility to notify potential owners/heirs of corrections is outside the scope of this regulation.

Title insurance company commenters asked whether a document will be disclosed on a TSR if LTRO has discovered a title defect during a title examination, requested the originating office correct the defect, and added a notation in the record of title.

*Response:* If a document meets the minimum requirements for recording, LTRO records the document and puts a notation on title, in which case the title document will appear on the TSR. If the document does not meet the minimum requirements for recording, such as when there is a fatal defect or required information is omitted, then LTRO sends the document back to the original office for a correction, in which case the title document generally would not appear on the TSR.

A few commenters suggested adding timelines for curing defects or omissions in title documents.

*Response:* The agency who is the originating office is responsible for curing any omission or error. When LTRO discovers a defect, LTRO sends the documents

electronically in real time to the LTRO for correction. Once LTRO receives the corrected document, the timeframes applicable to recording of any document applies.

#### **D. Comments on Subpart D**

##### **1. Certifying Copies (§ 150.301)**

A Tribe questioned whether there is, in fact, an “official seal” and stated that they have not yet received one even though they have compacted LTRO functions.

*Response:* BIA will follow up with the Tribe to provide a stamp that serves as the official seal.

##### **2. LTRO Reports (§ 150.302)**

An individual commenter requested clarification on who and to whom “uncertified reports” may be made.

*Response:* LTRO provides uncertified reports for the agency to provide to those authorized to receive the documents (for example, Tribal and individual Indian landowners). Uncertified reports are often provided to assist lenders in preparing mortgage documents, and then when LTRO records the finalized mortgage, LTRO provides a certified TSR.

##### **3. Who May Obtain Title Documents without FOIA (§ 150.303)**

An individual commenter requested that this section specify that owners whose ownership interests have been removed by the BIA and are appealing that removal may obtain copies of title documents without filing a Freedom of Information Act (FOIA) request.

*Response:* The Indian Land Consolidation Act, as amended by the American Indian Probate Reform Act of 2004 (AIPRA) explicitly states who may have access to title documents. AIPRA’s list of those who may have access does not include individuals who no longer qualify as owners. If the individual is appealing, as the commenter states, then the provisions of 25 CFR part 2 and 43 CFR part 4 may apply.

Multiple commenters requested that title insurance companies, lenders, and government agencies have access to title documents to support Tribal development and housing through their insurance products and support mortgage processes in Indian Country. Two title insurance company commenters asked whether a “legally authorized representative” would include a title company.

*Response:* “Legally authorized representatives” refer to those holding powers of attorney or serving as guardians for the Indian land owners. Title companies, lenders, and government agencies involved in the mortgage process are entitled to access to the appropriate title documents and reports under § 150.303(c), because they are effectively applying to lease, use, or consolidate Indian land; the BIA agency would verify that they are entitled to access and serve as the liaison to LTRO. The usual path for title companies to access records is through the BIA agency realty staff that are handling the underlying realty transaction. The agency realty staff have access to the record of title and provide the title company with appropriate records, and then request any certified copies from LTRO. Likewise, lenders and others work through the BIA agency, who would access the record of title and obtain the appropriate documents and reports from LTRO. In accordance with a recommendation from the Housing and Urban Development (HUD), the final rule also adds clarifying language to § 150.303 to specify that Federal agencies administering Native American homeownership programs, and lenders participating in these programs, are able to request and receive copies of title documents for Indian land without additional justification regarding leasing, using, or consolidating land.

A title insurance company commenter requested that the regulations precisely address any forms needed to authorize access to title documents.

*Response:* LTRO does not have any forms for accessing title documents; instead, BIA agency realty staff will contact LTRO by email to obtain the appropriate title documents and reports, and work with the requestor and LTRO.

A Tribe stated that the regulations should specify that any person or entity seeking records based on applying to lease, use, or consolidate Indian land must also be required to submit written proof of consent for the disclosure by the owners of the Indian land or Tribe with jurisdiction.

*Response:* In practice, the BIA agency realty staff serves as the gatekeeper and works with anyone seeking to lease, use, or consolidate Indian land to obtain the necessary title documents or reports from LTRO for the transaction. The final rule adds language to clarify that the BIA realty staff are the primary points of contact for anyone requesting information from the LTRO.

A Tribe commented on its need to have timely and unencumbered access to oil and gas records.

*Response:* This comment is beyond the scope of the regulations. The Federal records the Osage Mineral Council references in its comments are maintained by the BIA Osage Agency in relation to leasing of the Osage Mineral Estate for oil and gas mining and are not title records. Accordingly, the records are not governed by the LTRO regulations at issue.

#### **4. How to Request Copies (§ 150.304)**

An individual commenter requested adding a provision to allow individuals to request records directly from the LTRO when requesting them through their local agency would be sensitive (e.g., because they are evaluating their legal options).

*Response:* A direct request to LTRO would need to provide justification for not going through the BIA Agency or Region, including a case number if there is a challenge in progress. The final rule does not provide directions for requesting information directly from the LTRO because, in nearly all cases, requests should be made through the BIA Agency or Region.

A Tribe requested “title documents” be deleted so that only the LTRO with jurisdiction over the specified lands can provide copies. The Tribe pointed to a situation where an LTRO may know that there are probates pending on a certain parcel of land and check the status of the probate to see it has been adjudicated and an update to the records is necessary.

*Response:* Title documents do not reflect pending transactions, only those that are approved. Regardless of whether the LTRO is aware of a pending probate or other transaction, the pending probate or other transaction does not affect the title until approved. The LTRO updates title as soon as a transaction is approved, and each LTRO office has the same access to that record of title, so there is no benefit to limiting the ability to provide copies to only the LTRO with jurisdiction over the specified land.

## **5. Fees (§ 150.306)**

A Tribe commented that if they were to charge fees in carrying out LTRO functions under its self-governance compact, that they should not be bound by Federal standards because those standards are out of touch with “rush” orders and other demands.

*Response:* In fulfilling Federal functions as an LTRO, Tribes are bound by Federal regulations and statutes.

Another Tribe commented that the fee schedule is outdated and not representative of geographical differences and recommended that BIA authorize LTRO offices to develop their own fee schedules that are indexed to CPI and account for geographical differences.

*Response:* The final rule continues to use the fee schedule established at 43 CFR part 2, Appendix A, for consistency across the Department, to avoid “forum shopping” for the lowest fees and for administrative efficiency to prevent each of the 12 LTRO offices from having to individually publish and update their fees.

A Tribe opposed charging a fee to a Tribe with jurisdiction to obtain copies of records concerning land under its jurisdiction.

*Response:* The final rule deletes the provision allowing for Tribes with jurisdiction to be charged a fee for copies of documents related to land under their jurisdiction.

A title insurance company commented that paying for documents adds another hurdle for development by increasing the expense of doing business in Indian Country.

*Response:* The fees required under this rule are nominal and are an expected cost of doing business, given that companies charge for title searches and counties and localities often charge fees, as well.

HUD recommended adding an exception from paying fees for Federal agencies administering Native American homeownership programs and lenders participating in the programs.

*Response:* The final rule does not require LTRO to charge fees and provides that LTRO may waive the fees. LTRO generally will not charge fees to Federal agencies administering Native American homeownership programs and lenders participating in these programs for specific transactions.

#### **E. Comments on Subpart E**

A Tribe disagreed with the proposed rule's provision for determining whether a record is the property of the United States, stating that ownership should depend on an analysis of the BIA's ability to fulfill trust obligations if documents are "owned" by the United States, statutes, case law, and how agencies have treated similar documents in the past.

*Response:* The rule restates existing statutory law regarding the ownership of Federal records. *See* Federal Records Act, 44 U.S.C. chapters 29, 31, 33.



Another comment was that it is not realistic for a party who “makes or receives records” to preserve them in accordance with Departmental records retention procedures.

*Response:* The rule restates existing law regarding contractors’ obligation to preserve records under the Federal Records Act. *See* 36 CFR 1222.32.

Title insurance company commenters stated that the rule should address what happens to title documents when property is transferred out of trust or restricted status.

*Response:* The rule does not address what happens to title documents when property is transferred out of trust or restricted status, because at that point, it is no longer LTRO’s responsibility to maintain title to the property. Once property is transferred out of trust or restricted status, responsibility for maintenance of title to that property shifts to the county or locality.

#### **F. Miscellaneous**

Several comments addressed Realty functions, rather than LTRO functions, including expressing concerns with mortgages and other transaction timelines, and requesting a more transparent process on land transactions. One commenter requested published listings and organization charts for identifying the correct person to contact. A commenter also requested the addition of a BIA Realty ombudsman to assist Tribes in prioritizing residential mortgage approval packages and certified TSRs.

*Response:* These comments are not directly related to the current rulemaking, but the Department will work with BIA Realty staff to address these comments, as appropriate.

One Tribe stated that the rule should address records or encumbrances that are missing from TAAMS and detail a process for Tribes to report, and the Department to resolve, data gaps in TAAMS, and establish deadlines for the Department to resolve missing records.

*Response:* LTRO will work with BIA to identify whether there are any data gaps in TAAMS.

At least one commenter stated that the LTRO needs additional staff and resources to perform their duties.

*Response:* The Department is working with the appropriate Federal agencies to increase staff.

One Tribe requested the Department revise and reissue a more expansive proposed rule. Another commenter also requested reopening the comment period because the public comment period occurred over the holidays and through a change in Administration.

*Response:* The Department has considered this request and determined that the issues addressed by the Tribe could not be remedied by changes to this regulation because the issues relate to BIA realty functions, rather than LTRO functions. The Department has determined that finalization of these regulations at this time is important to replace the outdated regulations.

One Tribe commented that Tribes should have open access to TAAMS to conduct their own uncertified TSRs and accessing other trust records, which would increase transparency and improve processing time for LTROs.

*Response:* Title documents to Indian land are Federal and trust records, so access is subject to Privacy Act and other restrictions. For Tribes that are carrying out the Federal functions of the LTRO, Tribal staff must obtain the appropriate access credentials and Federal equipment.

On Tribe stated that LTRO should manage title to water, as well as land, and suggested further consultation on the lack of a comprehensive water management system by BIA.

*Response:* LTRO is not currently equipped to track water rights; however, the suggestion that a comprehensive water management system to track water user rights may be appropriate for future discussion and consultation.

One commenter urged that any changes in this rule be coordinated with those eventually adopted under the probate regulations.

*Response:* The Department is coordinating updates to both these regulations to ensure they are substantively consistent.

A title insurance commenter requested an explanation of BIA oversight and standards for Tribal LTROs.

*Response:* Tribes compacting or contracting the LTRO functions are subject to the same standards as Federal LTROs in that they must follow the same statutes and regulations.

A commenter stated that any regulatory updates should include a training effort to inform agency and LTRO staff.

*Response:* BIA will conduct training regarding following finalization.

#### **IV. Changes from Proposed Rule to Final Rule**

The final rule includes several changes from the proposed rule to address comments received on the proposed rule and for clarity. The following table lists each of the changes made from proposed to final:

<b>25 CFR §</b>	<b>Description of Changes Final Rule Makes to Proposed Rule</b>
150.1 What is the purpose of this part?	No changes to proposed rule.
150.2 What terms do I need to know?	Adds definitions for “inherently Federal function” and “land.”
150.3 May Tribes administer this part on LTRO’s behalf?	No changes to proposed rule.
150.101 What is the purpose of the record of title?	Deletes reference to the public being provided with constructive notice, because only certain individuals/entities have access to information in the record of title.

150.102 Who maintains the record of title?	No changes to proposed rule.
150.103 What services does the LTRO perform to maintain the record of title?	Adds to paragraph (b) “in accordance with applicable law” to clarify that only certain individuals/entities may obtain certified copies of title documents in the record of title. Clarifies that LTRO may provide uncertified Title Status Reports, in addition to certified Title Status Reports.
150.104 How does the LTRO maintain the record of title?	Deletes “system of record” as an unnecessary phrase that could be confused with “record of title.”
150.105 Are certain LTRO offices responsible for certain geographic areas?	Clarifies that only LTRO offices that are operated by BIA may assist in maintaining the record of title for Indian land not under their assigned geographic area. Tribes compacting or contracting LTRO functions would be subject to the Indian Self-Determination and Education Assistance Act requirements to obtain authorizing resolutions from each Tribe to be benefitted by the contract or contract. <i>See</i> 25 CFR 900.8(d)(1).
150.201 What is recorded in the record of title?	Deletes phrase “approved by the Secretary” when referring to Tribal Energy Resource Agreements (TERAs) under 25 CFR 224 as superfluous because TERAs must by definition be Secretarially approved under 25 CFR 224. Adds Tribal authorizations for Tribal utility lines crossing Tribal lands as an example of title documents that do not require Secretarial approval but must be recorded. No changes are made to paragraph (c), but please note that examples of documents that are not title documents that LTRO may record are documents related to: off-reservation BIE schools, Indian irrigation projects, off-reservation treaty fishing access sites, Federal public works placed on Indian land, and Tribal land assignments.
150.202 Must I check with any other governmental office to find title documents for Indian land?	Adds that LTRO maintains current and historical title documents for clarification.
150.203 Who may submit a title document for recording?	No changes to proposed rule.
150.204 Who records title documents?	No changes to proposed rule.
150.205 What are the minimum requirements for recording a title document?	Clarifies that a legal description of the Indian land that is encumbered by the title document must be included for the title document to be recorded. Revises to provide that the tract number must be included only if available.

	Adds that notarization or acknowledgment of the signatures of the parties must be in person, because the Department does not at this time accept remote notarization for Federal purposes.
150.206 What actions will LTRO take if it discovers a title defect?	Clarifies that LTRO will take the actions in paragraphs (a) and (b) if it discovers an omission or error, respectively, prior to recording a title document. Clarifies that LTRO does not record the title document if the defect is fatal.
150.301 How does LTRO certify copies of title documents?	No changes to proposed rule.
150.302 What reports does the LTRO provide?	No changes to proposed rule.
150.303 Who may request and receive copies of title documents in the record of title or reports from LTRO without filing a Freedom of Information Act request?	Clarifies that individuals and entities request copies of title documents and reports through their Region or Agency office, rather than from the LTRO directly. Adds that Federal agencies administering Native American homeownership programs and Federal lenders participating in the programs have access to title documents and reports without filing a Freedom of Information Act (FOIA) request.
150.304 Where do I request copies of title documents or reports from LTRO?	No changes to proposed rule.
150.305 What information must I provide when requesting copies of title documents and reports?	No changes to proposed rule.
150.306 Will I be charged a fee for obtaining copies of records?	Deletes Tribes from list of parties that may be charged a fee for copies of records for Indian land subject to the Tribe's jurisdiction.
150.401 Who owns the records associated with this part?	No changes to proposed rule.
150.402 How must records associated with this part be preserved?	No changes to proposed rule.
150.403 How does the Paperwork Reduction Act affect this part?	No changes to proposed rule.

## **V. Procedural Requirements**

### **A. Regulatory Planning and Review (E.O. 12866)**

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

### **B. Regulatory Flexibility Act**

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The rule addresses how Indian land title and records are maintained.

### **C. Small Business Regulatory Enforcement Fairness Act**

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- (a) Will not have an annual effect on the economy of \$100 million or more.
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- (c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises.

### **D. Unfunded Mandates Reform Act**

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. The rule does not

have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

#### **E. Takings (E.O. 12630)**

This rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required.

#### **F. Federalism (E.O. 13132)**

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

#### **G. Civil Justice Reform (E.O. 12988)**

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

- (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

#### **H. Consultation with Indian Tribes (E.O. 13175)**

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that Tribal consultation is appropriate because the rule addresses maintenance of land held in trust or restricted status for Tribes. The Department hosted consultation sessions on January 12 and 14,

2021 by telephone, and provided access on its website to a Powerpoint presentation setting out the proposed rule's provisions. Twelve Tribes submitted written comments during the consultation period. Summaries of those comments and responses to the comments are provided in Section III, above.

### **I. Paperwork Reduction Act**

This rule contains new information collections. All information collections require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The Department is seeking approval of a new information collection, as follows.

*Brief Description of Collection:* The Bureau of Indian Affairs (BIA) Land Title and Records Office (LTRO) maintains title documents for land that the United States holds in trust or restricted status for individual Indians or Tribes (Indian land), much like counties and other localities maintain title documents for fee land within their jurisdictions. Individuals or entities that are requesting information regarding title documents – either for property they own or for property they seek to lease or encumber – must provide certain information to the LTRO in order for LTRO to accurately identify the property for which they are seeking information. LTRO uses the information provided by individuals or entities in order to identify the property so that they can retrieve the appropriate title documents and produce reports for that property. The collection of information is found in § 150.305, which provides that anyone requesting title documents or reports must provide certain information, such as the name of the reservation where the land is located and the tract number or legal description.

*Title:* Requests for Indian Land Title and Records Information.

*OMB Control Number:* 1076–0196.



*Form Number:* None.

*Type of Review:* Existing collection in use without an OMB Control Number.

*Respondents/Affected Public:* Individuals, Private Sector, Government.

*Total Estimated Number of Annual Respondents:* 36.

*Total Estimated Number of Annual Responses:* 36.

*Estimated Completion Time per Response:* 0.5 hours.

*Total Estimated Number of Annual Burden Hours:* 19 hours (consisting of 10 hours for private sector respondents, 3 hours for individual respondents – rounded up from 2.5 hours, and 6 hours for government respondents – rounded up from 5.5 hours).

*Respondents' Obligation:* Required to obtain a benefit.

*Frequency of Response:* Occasionally.

*Total Estimated Annual Non-Hour Burden Cost:* \$500.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information collection, including:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of response.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review - Open for Public Comments" or by using the search function. Please provide a copy of your comments to [consultation@bia.gov](mailto:consultation@bia.gov). Please reference OMB Control Number 1076-0196 in the subject line of your comments.

#### **J. National Environmental Policy Act**

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the environmental effects of this proposed rule are too speculative to lend themselves to meaningful analysis and will later be subject to the NEPA process, unless covered by a categorical exclusion. (For further information see 43 CFR 46.210(i)). We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

#### **K. Effects on the Energy Supply (E.O. 13211)**

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

### **List of Subjects in 25 CFR Part 150**

Indians-lands.

For the reasons given in the preamble, the Department of the Interior amends 25 CFR chapter I, subchapter H, by revising part 150 to read as follows:

## **PART 150 – RECORD OF TITLE TO INDIAN LAND**

### **Subpart A – Purpose and Definitions** Sec.

- 150.1 What is the purpose of this part?
- 150.2 What terms do I need to know?
- 150.3 May Tribes administer this part on LTRO's behalf?

#### **Subpart B – Record of Title to Indian Land**

- 150.101 What is the purpose of the record of title?
- 150.102 Who maintains the record of title?
- 150.103 What services does the LTRO perform to maintain the record of title?
- 150.104 How does the LTRO maintain the record of title?
- 150.105 Are certain LTRO offices responsible for certain geographic areas?

#### **Subpart C – Procedures and Requirements to Record Documents**

- 150.201 What is recorded in the record of title?
- 150.202 Must I check with any other governmental office to find title documents for Indian land?
- 150.203 Who may submit a title document for recording?
- 150.204 Who records title documents?
- 150.205 What are the minimum requirements for recording a title document?
- 150.206 What actions will the LTRO take if it discovers a title defect?

#### **Subpart D – Disclosure of Title Documents and Reports**

- 150.301 How does LTRO certify copies of title documents?
- 150.302 What reports does LTRO provide?
- 150.303 Who may request and receive copies of title documents in the record of title or reports from LTRO without filing a Freedom of Information Act request?
- 150.304 Where do I request copies of title documents and reports from LTRO?
- 150.305 What information must I provide when requesting title documents or reports?
- 150.306 Will I be charged a fee for obtaining copies of records?

#### **Subpart E– Records**

- 150.401 Who owns the records associated with this part?
- 150.402 How must records associated with this part be preserved?
- 150.403 How does the Paperwork Reduction Act affect this part?

AUTHORITY: 5 U.S.C. 301; 5 U.S.C. 552a; 25 U.S.C. 2; 25 U.S.C. 5; 25 U.S.C. 7; 25 U.S.C. 9; 25 U.S.C. 14b; 25 U.S.C. 25; 25 U.S.C. 199; 25 U.S.C. 343; 25 U.S.C. 355; 25 U.S.C. 413; 25 U.S.C. 2201 et. seq.; 44 U.S.C. 2901 et. seq.; 44 U.S.C. 3101 et. seq.; and 44 U.S.C. 3301 et. seq.

#### **Subpart A – Purpose and Definitions**

## **§ 150.1 What is the purpose of this part?**

This part describes the BIA repository of title documents for Indian land and responsibilities for recording title documents, maintaining the repository, and providing reports on title to Indian land.

## **§ 150.2 What terms do I need to know?**

Agency means the BIA agency or field office with jurisdiction over a particular tract of Indian land or another BIA office through delegation and documentation of responsibilities in the Indian Affairs Manual. This term also means any Tribe acting on behalf of the Secretary or BIA under a contract or compact under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5301 *et seq.*).

BIA means the Bureau of Indian Affairs within the Department of the Interior.

Certified copy means a copy of a title document that is a true and correct copy of the title document as recorded in the record of title and evidenced by an official seal.

Certify for the purposes of certifying Title Status Reports, probate inventory reports, title status maps, and findings of title examinations means that an LTRO Certifying Officer has determined that the report, map, or examination of land title status is complete, correct, and current, based on the record of title.

Certifying Officer means the LTRO Manager or another properly authorized or delegated Federal official who certifies the status of title to Indian lands or copies of title documents.

Defect or title defect means an error contained within, or created by, a title document that makes the title to Indian land uncertain.

I or you means the person to whom these regulations directly apply.

Indian land means land, or an interest therein, that is:

(1) Held in trust by the United States for one or more individual Indians or Tribes; or

(2) Owned by one or more individual Indians or Tribes and can only be alienated or encumbered by the owner with the approval of the Secretary because of restrictions or limitations in the conveyance instrument or in Federal law.

Inherently Federal function means Federal function that may not legally be delegated to an Indian Tribe.

Land is real property, including any interests, benefits, and rights inherent in the ownership of the real property. Land may include surface and/or subsurface interests.

LTRO means the Land Title and Records Office within the BIA, which is responsible for recording title documents, maintaining the record of title, and providing certified copies of title documents and reports. The term LTRO, as used herein, includes any Tribe acting on behalf of the Secretary or BIA under § 150.3.

Manager is the designated officer in charge of a LTRO office or his or her designated representative.

OHA means the Office of Hearings and Appeals within the Department of the Interior.

Probate Inventory Report means a report of Indian land owned by an individual Indian at the time of his or her death.

Record of title means the BIA's repository of title documents for Indian land.

Recording is the acceptance of a title document and entry into the record of title of a title document by LTRO. An official LTRO stamp affixed to the title document provides evidence that the title document has been recorded.

Region means a BIA regional office.

Secretary means the Secretary of the Interior or his or her authorized representative.

Title means ownership of Indian land.

Title document means any document that affects the title to or encumbers Indian land, including but not limited to conveyances, probate orders, encumbrances (such as mortgages, liens, permits, covenants, leases, easements, rights-of-way), plats, cadastral surveys, and other surveys.

Title examination means a review and evaluation by the LTRO of: (1) title documents submitted to it for recording, and (2) the status of title for a particular tract of Indian land based on the record of title, and a finding, certified by the LTRO Manager, that title is complete, correct, current, and without defect, or identifies defects that must be corrected.

Title Status Report means a report issued after a title examination that shows the proper legal description of a tract of Indian land; current ownership, including any applicable conditions, exceptions, restrictions or encumbrances of record; and whether interests in the land are in unrestricted, restricted, trust, and/or other status as indicated by the record of title in the LTRO.

Tribe means an Indian Tribe under section 102 of the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 5129(a).

### **§ 150.3 May Tribes administer this part on LTRO's behalf?**

A Tribe may contract or compact under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5301 *et seq.*) to administer on LTRO's behalf any portion of this part that is not an inherently Federal function.

## **Subpart B –Record of Title to Indian Land**

### **§ 150.101 What is the purpose of the record of title?**

The record of title provides the BIA with a record of title documents to Indian land and provides constructive notice that the title documents exist.

### **§ 150.102 Who maintains the record of title?**

The LTRO is designated as the office responsible for maintaining the record of title.

**§ 150.103 What services does the LTRO perform to maintain the record of title?**

The LTRO is responsible for performing the following services to maintain the record of title:

- (a) Recording title documents submitted by an Agency, Region, or OHA;
- (b) Providing certified copies of the title documents in the record of title in accordance with applicable law;
- (c) Examining the record of title and certifying the findings of title examinations;
- (d) Providing certified and uncertified Title Status Reports;
- (e) Preparing, maintaining, and providing land status maps;
- (f) Providing and certifying probate inventory reports; and
- (g) Providing other services and reports based upon the information in the record of title.

**§ 150.104 How does the LTRO maintain the record of title?**

The LTRO maintains the record of title electronically. However, certain title documents may exist only as physical copies and not electronically.

**§ 150.105 Are certain LTRO offices responsible for certain geographic areas?**

Staff at each LTRO office will have primary responsibility to maintain the record of title for Indian land under that LTRO office's assigned geographic area, based on BIA Region, Tribal reservation, or otherwise, as prescribed by BIA through internal procedures. BIA will keep an updated list of each LTRO office's assigned geographic area of responsibility on [www.bia.gov/bia/ots/dltr](http://www.bia.gov/bia/ots/dltr). LTRO offices operated by BIA (as opposed to a Tribe acting on behalf of the Secretary) may assist in maintaining the record of title for Indian land not under their assigned geographic area as needed.

**Subpart C – Procedures and Requirements to Record Documents**

**§ 150.201 What is recorded in the record of title?**

(a) All title documents for Indian land must be recorded in the record of title, regardless of whether the document reflects a transaction that required Secretarial approval. For example, the following do not require Secretarial approval, but are title documents required to be recorded:

(1) Service line agreements must be recorded under 25 CFR 169.56;

(2) Individual leases under approved Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Tribal regulations must be recorded under the Indian Affairs Manual (IAM) at 52 IAM 13;

(3) Individual leases, business agreements, and rights-of-way under Tribal Energy Resource Agreements under 25 CFR 224 must be recorded;

(4) Leases between a Tribe and a Tribal energy development organization under 25 CFR 224 must be recorded;

(5) Leases of Tribal land by a 25 U.S.C. 477 corporate entity under its charter to a third party for a period not to exceed 25 years must be recorded under 25 CFR 162.006(b)(3)(i);

(6) Tribal authorization for Tribal utility lines crossing Tribal lands must be recorded under § 169.4(b)(3)(iii); and

(7) Subleasehold mortgages under 25 CFR 162.009 must be recorded.

(b) The requirement in paragraph (a) of this section does not eliminate or supersede any Federal statute or regulation requiring the recording of title documents for Indian land in other records of title, including title documents for Indian land within the jurisdiction of the Five Civilized Tribes or the Osage Nation.

(c) LTRO may also record:

(1) Documents that demonstrate the rights of use, occupancy, and/or benefit of a Tribe to U.S. Government land or other non-Indian lands; and



(2) Certain documents regarding Indian lands that are not title documents.

**§ 150.202 Must I check with any other governmental office to find title documents for Indian land?**

LTRO maintains current and historical title documents to Indian land but in certain circumstances, due diligence may require examination of other Federal, State, and local records of title.

**§ 150.203 Who may submit a title document for recording?**

Only an Agency, Region, or OHA may submit title documents to the LTRO for recording. All other government offices and individuals must submit title documents to the Agency, Region, or OHA, as appropriate, for that Agency, Region, or OHA to submit to the LTRO.

**§ 150.204 Who records title documents?**

The LTRO is the designated office to record title documents. The BIA Director may delegate the authority to record title documents to another BIA office by documenting the delegation and the types of transactions to which it applies in the Indian Affairs Manual.

**§ 150.205 What are the minimum requirements for recording a title document?**

(a) A title document must include the following information to be recorded in the record of title, except as provided in paragraph (b) of this section:

(1) A legal description of the Indian land encumbered by the title document and, if available, the tract number;

(2) The signatures of the parties to the document;

(3) Proper traditional in-person notarization or other in-person acknowledgment of the signatures of the parties, if applicable;

(4) Signature and citation to the authority of the approving official, if applicable;

and

(5) Approval date.

(b) If the title document reflects a transaction that was deemed approved under a statute or regulation providing that a transaction is deemed approved after a certain period of time without Secretarial action to approve or deny, then, at a minimum, the title document must include the following items:

(1) A legal description of the Indian land encumbered by the title document and, if required, the tract number;

(2) The signatures of the parties to the document;

(3) Proper acknowledgement or authentication of the signatures of the parties, if applicable; and

(4) A citation to the statutory or regulatory authority for the transaction to be deemed approved.

**§ 150.206 What actions will the LTRO take if it discovers a title defect?**

(a) If prior to recording a title document, the LTRO discovers that the title document omits one or more of the items required for recording by § 150.205(a) or (b), then the LTRO will notify the originating office to request correction. Once the omission is corrected, the LTRO will record the title document.

(b) If prior to recording a title document, the LTRO discovers there is an error in one or more of the items required for recording by § 150.205(a) or (b), then the LTRO will record the title document, unless the defect is fatal, with a notation on title and notify the originating office to request correction. Once the error is corrected, the LTRO will record the corrected title document and remove the notation.

(c) If the LTRO discovers a title defect during a title examination, the LTRO will notify the originating office of the defect, request correction, and make a notation in the record of title. Once the defect is corrected, the LTRO will record the corrected title

document or other legal instruments to correct the title document and remove the notation.

(d) If the defect is contained in a probate record, the LTRO will notify the Agency or Region to initiate corrective action with the OHA.

## **Subpart D – Disclosure of Title Documents and Reports**

### **§ 150.301 How does the LTRO certify copies of title documents?**

The Certifying Officer certifies copies of title documents in the record of title by affixing an official seal to the copy of the title document. The official seal attests that the certified copy is a true and correct copy of the recorded title document.

### **§ 150.302 What reports does the LTRO provide?**

The LTRO provides the following types of reports for Indian land to those persons or entities authorized to receive such information:

(a) Certified reports, including a Title Status Report, Land Status Map, and, as part of the probate record, the Probate Inventory Report; and

(b) Uncertified reports or other reports based upon the information in the record of title.

### **§ 150.303 Who may request and receive copies of title documents in the record of title or reports from the LTRO without filing a Freedom of Information Act request?**

The following individuals and entities may request and receive, through the Region or Agency office, copies of title documents in the record of title or reports for Indian land from the LTRO without filing a Freedom of Information Act request to the extent that disclosure would not violate the Privacy Act or other law restricting access to such records, for example, 25 U.S.C. 2216(e):

(a) Owners of an interest in Indian land (or their legally authorized representative) may request copies of title documents in the record of title or reports for the Indian land in which they own an interest;

(b) The Tribe with jurisdiction over the Indian land may request title documents or reports for Indian land subject to the Tribe's jurisdiction;

(c) Any person (or their legally authorized representative) or entity who is leasing, using, or consolidating Indian land or is applying to lease, use, or consolidate Indian land may request title documents or reports for such Indian land; and

(d) Federal agencies administering Native American homeownership programs and Federal lenders participating in these programs who need information on specific Indian land to provide funding.

#### **§ 150.304 Where do I request copies of title documents or reports from the LTRO?**

You may request LTRO information, such as copies of title documents or reports, at any Region or Agency office with access to the record of title, regardless of geographic location. If the Region or Agency office does not have access to the title documents or the ability to generate the reports requested, it will refer the request to the office with access to the title documents or ability to generate the reports requested.

#### **§ 150.305 What information must I provide when requesting copies of title documents and reports?**

(a) Except as provided in paragraph (b), to request title documents or reports, you must provide only one of the following items of information:

(1) If you are inquiring about your own interest in the tract, then your name and date of birth, or identification number; or

(2) The name of the reservation where the land is located and either the tract number or legal description; or

(3) The Agency name and either the tract number or legal description; or

- (4) A legal description of the tract; or
- (5) A title document number pertaining to the tract; or
- (6) The allotment number including the Tribe or land area code; or
- (7) The name of the original allottee.

(b) Individuals and entities described in § 150.303(c) must also provide documents showing that they are entitled to the information they are requesting from the LTRO because they are leasing, using, or consolidating Indian land or the interests in Indian land, or because they are applying to lease, use, or consolidate Indian land or the interests in Indian land.

**§ 150.306 Will I be charged a fee for obtaining copies of records?**

(a) The LTRO may charge a fee to any of the parties listed in § 150.303 (c) for each copy of recorded title documents, Title Status Reports, and land status maps to cover the costs in reviewing, preparing, or processing the documents.

(b) The fee will be at the rate established by 43 CFR 2, Appendix A.

(c) The LTRO may waive all or part of these fees, at its discretion.

(d) Paid fees are non-refundable.

**Subpart E—Records**

**§ 150.401 Who owns the records associated with this part?**

(a) The records associated with this part are the property of the United States if they:

(1) Are made or received by the Secretary or a Tribe or Tribal organization in the conduct of a Federal trust function under 25 U.S.C. 5301 *et seq.*, including the operation of a trust program; and

(2) Evidence the organization, functions, policies, decisions, procedures, operations, or other activities undertaken in the performance of a Federal trust function under this part.

(b) Records not covered by paragraph (a) of this section that are made or received by a Tribe or Tribal organization in the conduct of business with the Department of the Interior under this part are the property of the Tribe.

**§ 150.402 How must records associated with this part be preserved?**

(a) Tribes, Tribal organizations, and any other organization that make or receives records described in § 150.401(a) must preserve the records in accordance with approved Departmental records retention procedures under the Federal Records Act, 44 U.S.C. chapters 29, 31 and 33. These records and related records management practices and safeguards required under the Federal Records Act are subject to inspection by the Secretary and the Archivist of the United States.

(b) A Tribe or Tribal organization should preserve the records identified in § 150.401(b) for the period of time authorized by the Archivist of the United States for similar Department of the Interior records in accordance with 44 U.S.C. chapter 33.

**§ 150.403 How does the Paperwork Reduction Act affect this part?**

The information collections contained in this part have been approved by the Office of Management and Budget under 44 U.S.C 3301 *et seq.* and assigned OMB Control Number 1076-0196. Response is required to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless the form or regulation containing the collection of information has a currently valid OMB Control Number.

**Bryan Newland,**  
*Assistant Secretary – Indian Affairs.*